1880.

SUPREME COURT OF THE UNITED STATES.

No. 178.

WILLIAM C. BRASHEAR, PLAINTIFF IN ERROR,

vs.

THE HON. SECRETARY OF THE NAVY OF THE U. STATES, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE U. STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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J. & G. S. Gideon, printers.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the District of Columbia, for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, or some of you, between William C. Brashear, plaintiff, and the Hon. John Y. Mason, Secretary of the Navy of the United States, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the present December term of the Supreme Court of the United States now sitting at the city of Washington, together with this writ, and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court.

Issued this 11th day of December, 1847.

W. BRENT, *Clerk.*

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the honorable John Y. Mason, Secretary of the Navy of the United States, greeting:

You are hereby cited and admonished to be and appear at the present December term of the Supreme Court of the United States, now sitting, pursuant to a writ of error filed in the clerk's office of the circuit court for the District of Columbia, for the county of Washington, wherein William C. Brashear is plaintiff in error and you are defendant in error, to shew cause, if any there be, why judgment rendered against the said William C. Brashear should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable W. Cranch, chief judge, this 11th day of December, 1847.

W. CRANCH.

Served on P. B. Key, esq., United States attorney for the District of Columbia, this 11th December, 1847.

ALEX'R HUNTER, *Marshal.*

Copy of appeal bond.

Know all men by these presents, that we, William C. Brashear and Jonathan T. Walker, are held and firmly bound unto the United States of North America in the full and just sum of two hundred dollars, current money, to be paid to the said United States, their certain attorney, or assigns; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this eleventh day of Dec., 1847.

Whereas lately, at a circuit court of the District of Columbia, for the county of Washington, in a suit pending in the said court, wherein the said William C. Brashear was plaintiff, and the honorable John Y. Mason, Secretary of the Navy of the United States, was defendant, judgment was rendered against the said plaintiff; and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit; and a citation directed to the said the honorable Secretary of the Navy, citing and admonishing him to be and appear at the present December term of the Supreme Court of the United States, now sitting at the city of Washington.

Now, the condition of the above obligation is such, that if the said William C. Brashear shall prosecute his said writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

WM. C. BRASHEAR, [SEAL.]
J. T. WALKER. [SEAL.]

Signed, sealed, and delivered, in the presence of—
C. E. WALKER.

Approved. W. CRANCH.

A true copy. Test, W. BRENT, *Clerk.*

Style of court.

DISTRICT OF COLUMBIA, *sct.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-second—

Present: The honorable William Cranch, chief judge, the honorable James S. Morsell, and the honorable James Dunlop, associate judges.

Alexander Hunter, esq., marshal.

WILLIAM BRENT, *Clerk.*

In the record of proceedings of the said court, amongst others, were the following, to wit:

Parties.

WILLIAM C. BRASHEAR
vs.
The Hon. THE SECRETARY OF THE NAVY of the United States.

Be it remembered, that heretofore, to wit, on the twentieth day of this month of October, in the year of our Lord one thousand eight hundred and forty-seven, and on the third day of the term of the circuit court of the United States for the District of Columbia, and county of Washington, came William C. Brashear, and presented his petition, with his affidavit annexed, in the words and figures following, to wit:

Petition.

To the honorable the judges of the circuit court of the United States for the District of Columbia, and county of Washington.

Your petitioner, William C. Brashear, most respectfully represents, that he was, on the 23d September, 1844, in pursuance of the constitution and laws of the Republic of Texas, appointed by his excellency Sam. Houston, President of the Republic, a commander in the navy of the Republic, as will appear by the letter of appointment herewith exhibited, to wit:

Appointment as a commander in the navy of Texas.

EXECUTIVE DEPARTMENT,
Washington, 23d Sept., 1844.

SIR: You are hereby appointed a commander in the navy of the Republic of Texas, to take effect from this date.

You will faithfully discharge your duties as such, and be obeyed and respected accordingly.

SAM. HOUSTON.

To W. C. BRASHEAR, Esq., &c., &c., &c.

That he forthwith entered into service, under orders from the Department of War, herewith exhibited, to wit:

Orders from Department of War to W. C. Brashear.

DEPARTMENT OF WAR AND MARINE,
Washington, 23d Sept., 1844.

SIR: Herewith you will receive an appointment of commander in the navy of the Republic. You will proceed forthwith to Galveston, and relieve Lieut. Wm. A. Tennison, commanding the navy in ordinary in that harbor. He has received instructions to turn over every thing appertaining to the vessels, and to exhibit to you his orders and instructions, by which you will perceive that two of the vessels, the ship and brig Wharton, have required repairs upon their bottoms for some months, and that the department has given instructions, and furnished funds for the purpose; but in consequence of Mr. Tennison's severe indisposition, the death of Mr. Crisp, and other obstacles, the work has been retarded. You will find the brig aground, and the ship, if not yet complete, in rapid progress towards it. Let every exertion be made to expedite the work, and if possible to devise any plan to economize the expenditures, and at the same time attain the objects of the Government, do so immediately.

When the ship shall have been completed, a pretty correct estimate

may be made of the expense of raising and repairing the brig. Lieut. Tennison thinks the amount already furnished for the purpose will be amply sufficient to complete both vessels.

Purser Stephens has instructions to ship and pay off the men, and to furnish supplies. Lieut. Tennison will remain in service, and receive your orders for duty.

Let the department be timely advised of every thing that may occur, and adopt every precaution against disasters.

I have the honor to be, your obedient servant,

G. W. HILL, *Secretary*.

To Com'dr. WM. C. BRASHEAR, *Texas navy*.

That, on the 23d June, 1845, your petitioner received a commission in due form of law, signed by Anson Jones, then President of the Republic of Texas, countersigned by Wm. G. Cook, then Secretary of War and Marine, and sealed with the seal of the Republic of Texas, appointing your petitioner a commander in the navy of said Republic of Texas, to bear date from the 23d day of September, in the year 1844, as by said commission herewith exhibited more at large appears, to wit:

Commission to W. C. Brashear as commander.

In the name and by the authority of the Republic of Texas, to all whom these presents shall come, greeting:

Know ye, that I, Anson Jones, President of said Republic of Texas, reposing special trust and confidence in the patriotism, valor, fidelity, and ability of William C. Brashear, do hereby commission him a commander in the navy of the Republic of Texas, to bear date from the 23d day of September, in the year one thousand eight hundred and forty-four. This commission to continue in force during the pleasure of the President of the Republic of Texas for the time being. He is, therefore, carefully and diligently to discharge the duties of commander, by doing and performing all manner of things thereunto relating; and I do strictly charge and require all under his command to be obedient to his orders as such.

Given under my hand and the great seal of the republic, at Washington, this 23d day of June, in the year of our Lord one thou-
[L. S.] sand eight hundred and forty-five, and of the independence of the republic the tenth.

ANSON JONES.

By the President:

WM. G. COOKE, *Secretary of War*.

And also by the order, to him directed, bearing date the 10th February, 1846, to wit:

Order to report for duty.

DEPARTMENT OF WAR AND MARINE,

Austin, 10th February, 1846.

To Commander W. C. BRASHEAR.

SIR: Captain John G. Tod having been ordered to Galveston to as-

sume command of the navy in ordinary, you will, on the receipt of this, report to him for duty.

I have the honor to be,

WM. G. COOKE,
Sec'y of War and Marine.

Your petitioner further states that he was in service and in command of the Texian navy, under his commission aforesaid, from the said 23d September, 1844, thenceforth; and was so in service when the joint resolution of the Congress of the United States passed for annexing Texas to the United States was approved, and when the said State of Texas was admitted into the Union and Confederacy of the United States of America; and was actually in service, and a commander in the navy of Texas, when the ship Austin, brigs Wharton and Archer, and schooner San Bernard, armed vessels of war and belonging to the Texian navy, were delivered over to the United States under the terms and articles of compact and agreement between the United States of America and the Republic of Texas; and, as such, your petitioner is advised that he is in good faith, and in accordance with the said articles, agreement, compact, and treaty of annexation, an officer in the navy, and entitled to his pay and emoluments from the United States.

Your petitioner states that he has never resigned his said commission, nor been cashiered or dismissed; that he hath regularly reported himself for duty, under his said commission, to the Secretary of the Navy of the United States, and hath demanded his pay as an officer; but the Secretary of the Navy of the United States hath hitherto refused, and yet refuses, to pay your petitioner, or to recognise him as an officer of the navy; all which will more fully appear by your petitioner's reports, and the answers of the Secretary of the Navy, herewith exhibited, to wit:

Secretary of the Navy to W. C. Brashear.

NAVY DEPARTMENT, *April 24th*, 1847.

SIR: Your letter of the 6th ultimo was duly received.

I have carefully examined the question submitted in your letter, and do not regard you as in any manner connected with the navy of the United States. The joint resolution of annexation of Texas requires a cession of *property* by Texas to the United States, and does not operate a transfer of persons in the official employment of Texas to that of the United States. I cannot, therefore, give you any order for duty in the naval service of the United States. I enclose you a copy of a letter, which I addressed to the Hon'ble Mr. Stanton, during the late session of Congress, as presenting a more full expression of my opinions on the subject.

I am, respectfully, your obedient servant,

J. Y. MASON.

WM. C. BRASHEAR, ESQ.,
Washington city.

Same to same.

NAVY DEPARTMENT, *May 4th*, 1847.

SIR: Your letter of the 1st instant has been received.

In reply I would observe, that, in my communication to you of the 24th ultimo, you were informed that you were not regarded as in any manner connected with the navy of the United States.

I am, respectfully, your ob't serv't,

J. Y. MASON.

WM. C. BRASHEAR, *Washington, D. C.*

Same to same.

NAVY DEPARTMENT, *August* 3, 1847.

SIR: Your letter of the 1st instant has been received.

The case having been already determined, the department can only repeat that it does not regard you as attached to the navy of the United States.

I am, sir, respectfully, your obedient servant,

J. Y. MASON.

WM. C. BRASHEAR, ESQ., *Washington*.

Your petitioner states that he is informed and advised, by counsel learned in the law, that, for his pay and emoluments as an officer of the navy of Texas transferred to the United States by the terms of annexation aforesaid, he is entitled to have and receive, up to the first day of October, 1847, the sum of $2100, whereof your petitioner hath received from the Treasury of the United States no more than the sum of $689.20, which was paid him by order of the Secretary of the Navy of the United States of the 19th of March, 1847; and your petitioner is also advised, that he is entitled to his continuing pay and rank as an officer in the navy of the United States, by virtue of the said agreement, compact, treaty, and transfer before mentioned.

Notwithstanding all which, the Secretary of the Navy of the United States refuses to order payment to your petitioner for the time past since the said annexation and transfer aforesaid, or to recognise your petitioner as an officer in the navy of the United States.

Your petitioner therefore prays this honorable court for a rule against John Y. Mason, the Secretary of the Department of the Navy of the United States, requiring him to show cause, if any he can, why a mandamus should not issue, commanding him, as Secretary of said Department, to cause payment to your petitioner of his just dues, as an officer in the navy for the time past since the annexation of Texas to the United States; and as in duty, &c.

WM. C. BRASHEAR.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

On this 20th day of October, 1847, before the subscriber, a justice of the peace in and for said county, personally appeared Commander William C. Brashear, and made oath in due form of law that the state-

ments set forth in the foregoing and above petition, are true to the best of his knowledge and belief.

Subscribed and sworn before me.

B. K. MORSELL, *J. P.*

J. P. Henderson to Lt. W. A. Tennison.

Letter from J. Pinckney Henderson to Lieut. W. A. Tennison.

EXECUTIVE DEPARTMENT,
Austin, April 25th, 1846.

To Lieut. WM. A. TENNISON,
Comd'g Navy in ordinary, Galveston.

SIR: You will, upon the receipt of this, be informed that the Hon. H. G. Runnels is authorized, on the part of the United States Government, to receive all public property connected with the Republic of Texas. You are, therefore, hereby required to hand over to him all vessels, arms, stores, the navy yard, and all buildings and other property connected with the naval service of our late Republic, and take an inventory and his receipt for the same, which you will return to this office as soon as practicable.

I have the honor to be, your ob't serv't,
J. PINCKNEY HENDERSON.

C. S. Mason to same.

Letter from Charles S. Mason to same.

EXECUTIVE DEPARTMEMT,
Austin, June 6th 1846.

SIR: Your communication of the 29th ulto., accompanied by a list of the naval property, including the vessels of war, belonging to the late Republic of Texas, transferred to United States commissioner in accordance with instructions from this Department, has been received, and will be laid before his excellency A. C. Horton, governor pro tempore, as soon as he returns to the capital, being now absent to the lower country.

I have the honor to be, very respectfully, your ob't serv't,
CHARLES S. MASON.

W. A. TENNISON, ESQ.,
Comd'g Navy in Ord'y, Galveston.

Account vs. *Navy Department United States.*

Account of W. C. Brashear against the United States Navy Department.

The United States Navy Department, Dr. to Wm. C. Brashear, late a commander in the Texan navy.

For services in taking care of the property of the United States, formerly belonging to the Texan navy, and transferred to the United States by Texas, from 16th February, 1846, to August 1st, 1846 - - - -	$689 20

Order of the Secretary to pay it.

From representations made to me in person by Commander Randolph, and on the principles which guided him, under instructions from the Department, in paying other officers of the late navy of Texas for similar services, I approve this bill for six hundred and ninety dollars and twenty cents, and direct its payment by the navy agent, Washington.

J. Y. MASON.

NAVY DEPARTMENT, *March* 19, 1847.

Motion overruled.

Whereupon the said petitioner, by George M. Bibb, esquire, his attorney, moved the court for a rule upon the Secretary of the Navy Department, to show cause, if any he can, why a writ of mandamus should not issue, according to the prayer of the petition aforementioned; which motion being argued, the court took time to advise. And now, at this day, the sixth day of the term aforesaid, on Saturday, the 23d day of October, A. D. 1847, in the 72d year of the independence of the United States, the court, being fully advised, ordered that the said motion be overruled, and that the prayer of the said petition be rejected; to which judgment of the court the said petitioner, W. C. Brashear, excepts, and prays that this bill of exceptions may be signed, sealed, and enrolled, which is done and ordered accordingly.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

Test: WM. BRENT, *Clerk*.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

I, William Brent, clerk of the circuit court of the District of Columbia for the county of Washington, hereby certify, that the aforegoing is a full, true, and perfect transcript of all the proceedings had in the said court, in the matter of the petition of William C. Brashear for a rule on the Secretary of the Navy of the United States to shew cause why a mandamus should not issue, &c., as appears from the minutes of the proceedings of said court.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, this 9th December, 1847.

W. BRENT, *Cl'k*.

WM. C. BRASHEAR, pl'ff,
vs.
THE SECRETARY OF THE NAVY of the United States, def't.

The plaintiff saith, in the record and proceeding in the aforegoing case and proceeding of the circuit court of the United States for the District of Columbia and county of Washington, manifest error hath in-